bookmakers. There may well have been others and it may well be, as the appellant I think admitted in cross-examination, that W., S. and other persons occasionally visited the appellant's house to discuss racing matters. This, however, does not to my mind justify the inference that the appellant was a runner or agent of any bookmaker.

After some hesitation, I have come to the conclusion that in the present case, which as I have already said is an exceptional one, the appellant has discharged the onus which was upon him, in that, in my opinion, there is no sufficient evidence that in the relevant years he was in receipt of a chargeable income.

For these reasons I am of opinion that the appeal succeeds and must be allowed with costs here and below; the decision of the Board of Review is set aside and the relevant assessments quashed.

Appeal allowed.

Solicitors: *Murphy & Dunbar.*

LOW SOON KEE & CO. v. KEW MENG & CO.

[A. C. J. (Wee Chong Jin J.) December 10, 1962]

[Singapore — District Court Appeal No. 16 of 1962]

Landlord and Tenant — Controlled and non-controlled premises subject matter of single letting — Expiry of common law tenancy — Holding over as statutory tenant — Meaning of "premises" — Control of Rent Ordinance (Cap. 242), s.2.

This was an appeal from the decision of the Civil District Judge granting possession of a piece of vacant land to the respondents, the plaintiffs in the action, on the ground that the vacant land in question was not "premises" within the meaning of the Control of Rent Ordinance. The vacant land in question originally formed part of a larger piece of vacant land. On part of this larger piece of vacant land were erected, in or about 1942, three shophouses. The unbuilt on portion is the subject matter of this action and is situated immediately behind the three shophouses and is separated from them by a wall, but with access to it from these three shophouses. In 1948 the plaintiffs became tenants of one of the shophouses and 3 or 4 months thereafter they also became tenants of the same landlord of the vacant land in question. On June 1, 1956 by a written agreement a portion of their rented shophouse and the vacant land in question were sub-let by the plaintiffs to the defendants for a period ending on May 1, 1961 at a rent of $65 per month. The tenancy having expired by effluxion of time, the question for decision was whether the defendants were entitled to hold over as statutory tenants of the portion of the shophouse together with the vacant land or whether they were only entitled to hold over as statutory tenants the portion of the shophouse but not the vacant land.

Held: where, as in the present case, there has been a single letting the subject matter of which comprises part controlled premises and part non-controlled premises and the facts, are such that enjoyment of one part is dependent upon occupation of the whole, a tenant under such a tenancy upon the expiration of his common law tenancy is entitled to hold over as statutory tenant of the whole of the subject matter of the original tenancy. It would be wrong in principle in such a case to create two separate tenancies out of a single letting as this could never have been in the contemplation of the parties.

DISTRICT COURT APPEAL.

E. W. Barker for the appellants (defendants).

N. A. Christopher for the respondents (plaintiffs).

Wee Chong Jin J.: This is an appeal from a decision of the learned Civil District Judge granting possession of a piece of vacant land to the respondents, the plaintiffs in the action, on the ground that the vacant land in question was not "premises" within the meaning of the Control of Rent Ordinance.

The facts, except on one matter which I will later refer to, are not in dispute. The vacant land in question originally formed part of a larger piece of vacant land. On part of this larger piece of vacant land were erected, in or about 1942, three shophouses numbered respectively 441-N, 441-O and 441-P Upper Serangoon Road. The unbuilt on portion is the subject matter of this present action and is situated immediately behind the three shophouses and is separated from them by a wall, but with access to it from these three shophouses.

In 1948 the plaintiffs became tenants of No. 441-O Upper Serangoon Road and 3 or 4 months thereafter they also became tenants of the same landlord of the vacant land in question. On the 1st of June, 1956 by an agreement in writing a portion of No. 441-O Upper Serangoon Road and the vacant land in question were sub-let by the plaintiffs to the defendants for a period ending on the 1st May, 1961 at a rent of $65 per month.

On these facts it is clear and there appears to be no difference of opinion between counsel for both parties that at the date of the subletting the portion of house No. 441-O sub-let by the plaintiffs to the defendants was controlled premises if sub-let separately, and the vacant land was not controlled premises if sub-let separately. On the pleadings and on the evidence before the learned Judge it is, in my opinion, clear however that the portion of house No. 441-O together with the vacant land in question were the subject matter of one single indivisible tenancy, notwithstanding that a partner of the plaintiffs in the course of re-examination stated that there was an understanding that the rent for the portion of 441-O was to be $20 and the rent for the vacant land was to be $45 per month.

The question then remains, the tenancy having expired by effluxion of time, whether the defendants were entitled to hold over as statutory tenants of the portion of the house together with the vacant land or whether they were only entitled to hold over as statutory tenants the portion of No. 441-O but not the vacant land. The question to be decided appears to be a novel one. Can it be said, as counsel for the plaintiffs so contends, in a case where the subject matter of a single letting comprises premises which are controlled as to one part and non-controlled as to the another part, that a tenant becomes a pro-

tected tenant in respect of the controlled part only? It may well be so if the subject matter of such a tenancy comprises part controlled and part non-controlled premises the enjoyment of either of which by a tenant is not dependent upon occupation of the whole of the subject matter of the tenancy. In this case the plaintiffs have not, in my opinion, brought any evidence to show that such was the position of this sub-letting.

Where, however, as in my opinion the present case is one, there has been a single letting the subject matter of which comprises part controlled premises and part non-controlled premises and the facts are such that enjoyment of one part is dependent upon occupation of the whole I am of the view that a tenant under such a tenancy upon the expiration of his common law tenancy is entitled to hold over as statutory tenant of the whole of the subject matter of the original tenancy. It would, in my opinion, be wrong in principle in such a case to create two separate tenancies out of a single letting as this could never have been within the contemplation of the parties.

For all these reasons the appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *Lee & Lee; N. A. Christopher.*

SHAARI v. PUBLIC PROSECUTOR

[A. Cr. J. (Azmi J.) July 12, 1962]

[Ipoh — Criminal Appeal No. 94 of 1962]

Criminal Procedure — Undefended accused — Failure to explain case for prosecution — Prejudice — Criminal Procedure Code (Cap. 6), ss.257 and 422.

Criminal Law — Stolen property — Charge of dishonestly receiving — Penal Code, s.411.

This was an appeal against the appellant's conviction on a charge under section 411 of the Penal Code. In the Court below he was unrepresented by counsel and gave evidence denying knowledge of how the goods in question came to be where they were found. The record of the proceedings did not show that the requirements of section 257 of the Criminal Procedure Code were complied with. One of the grounds of appeal was that since the appellant was not represented by counsel, there was failure from complying with the requirements of the section and the trial was thereby vitiated.

Held: in this case, although the learned Magistrate had failed to explain the main points of the evidence against the appellant, he (the appellant) was able in his defence to give an intelligent reply; therefore, having regard to what had taken place subsequent to that the accused had not been prejudiced in his defence, the failure to comply with the provisions of section 257 of the Criminal Procedure Code had not occasioned any prejudice or a reasonable probability of prejudice but was an omission curable under section 422 of the Code.

Cases referred to:—

(1) *N.A. Subramania Iyer* v. *King-Emperor* (1901), 28 I.A. 257.

(2) *Willie (William) Slaney* v. *State of Madhya Pradesh* A.I.R. 1956 S.C. 116; [1955] 2 S.C.R. 1140.

MAGISTRATE'S CRIMINAL APPEAL.

S. P. Seenivasagam for the appellant.

H. Sankey (Deputy Public Prosecutor) for the respondent.

Azmi J.: In this case the accused was charged as follows:—

"That you between 3.30 p.m. on 19.9.60 and 7.30 a.m. on 20.9.60, at Jalan Senggang Estate, Seberang Manong, in the District of Kuala Kangsar, in the State of Perak, committed theft of 16 bunches of banana valued at $12 belonging to one Low Tak I/C PK. 005709, and that you thereby committed an offence punishable under section 379 of the Penal Code.

Alternatively:

That you on 20.9.60 at about 4.30 p.m. at Kg. Ara Panjang, Manong, in the District of Kuala Kangsar, in the State of Perak, dishonestly retained stolen property to wit 16 bunches of banana valued at $12 belonging to one Low Tak I/C PK. 005709, having reason to believe the same to be stolen property, and that you thereby committed an offence punishable under section 411 of the Penal Code."

The prosecution case was that on the night of the 19th September, 1960, a banana planter found that a number of bunches of bananas were missing from his garden. The next morning a number of bunches of bananas were found in a shed built against a wall of the accused's shop at Kampong Ara Panjang. The accused was a shop-keeper doing business at the same premises, and one of the things he dealt in was bananas. A number of those bunches found were identified by the complainant as having been cut from his garden by some method of identification, which was not disputed by the defence.

The accused gave evidence in the Court below denying knowledge of how those bananas came to be where they were found.

The learned Magistrate convicted the accused for retaining stolen property under section 411 of the Penal Code. As the accused had three other previous convictions he sentenced him to 3 months' imprisonment and one year's police supervision.

The appellant submitted several grounds of appeal but, in my view, there is only one ground which is of any substance. This ground alleges that since the appellant was not represented by counsel, the learned Magistrate failed to comply with the requirements of section 257 of the Criminal Procedure Code and the trial was thereby vitiated. Section 257(i) says as follows:—

"257. (i) At every trial before the Court of a Magistrate if and when the Court calls upon the accused for his defence it shall, if he is not represented by an advocate, inform him of the right to give evidence on his own behalf, and if he elects to give evidence on his own behalf shall call his attention to the principal points in the evidence for the prosecution which tell against him in order that he may have an opportunity of explaining them."

There is nothing in the record of the proceedings to show that this was done. The Magistrate's notes merely say:—

"pp to 5.12.60 for continuation and to call for defence."